

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10	OLD GROVE SERVICE, INC., a)	Case No. 07cv1772-JM (BLM)
11	California corporation,)	
12	Plaintiff,)	ORDER DENYING DEFENDANT
13	v.)	MCDONALD'S CORPORATION'S <i>EX</i>
14	MCDONALD'S CORPORATION, a)	PARTE APPLICATION AND
15	Delaware corporation; and DOES)	CONVERTING EARLY NEUTRAL
16	1 through 10, inclusive,)	EVALUATION CONFERENCE TO
17	Defendants.)	TELEPHONIC, ATTORNEYS-ONLY
18)	CONFERENCE
19)	[Doc. No. 18]

On January 10, 2008, Defendant McDonald's Corporation filed an *ex parte* application to reschedule the Early Neutral Evaluation Conference ("ENE") presently scheduled for February 4, 2008, due to its client representatives' unavailability on that day. Doc. No. 18. McDonald's proposes February 28, 2008 at 1:30 p.m. as an alternative date when all counsel and clients for both parties are available. Id.

Because Local Rule 16.1(c) requires this Court to conduct an ENE within forty-five (45) days of the filing of the first answer and February 28th is outside of that window, the *ex parte* application is **DENIED**. However, in light of the fact that the representatives from McDonald's who have full settlement authority will not be available on

1 February 4th, the Court finds it appropriate to convert the ENE to a
 2 telephonic, attorneys-only conference. Counsel for both parties shall
 3 participate on **February 4, 2008** at **1:30 p.m.** The Court will initiate
 4 the call. Counsel may discuss with the Court at that time whether it
 5 likely would be fruitful to convene a full settlement conference on
 6 February 28, 2008.

7 The parties are hereby advised that the Court still requires
 8 confidential ENE statements to be filed no later than five (5) court
 9 days prior to the February 4, 2008 telephonic ENE. The parties shall
 10 submit confidential statements no more than ten (10) pages¹ in length
 11 directly to the chambers of the Honorable Barbara L. Major. **These**
 12 **confidential statements shall not be filed or served on opposing**
 13 **counsel.** Each party's confidential statement must include the
 14 following:

15 a. A brief description of the case, the claims and/or
 16 counterclaims asserted, and the applicable defenses or position
 17 regarding the asserted claims;

18 b. A specific and current demand or offer for settlement
 19 addressing all relief or remedies sought. If a specific demand or offer
 20 for settlement cannot be made at the time the brief is submitted, then
 21 the reasons therefore must be stated along with a statement as to when
 22 the party will be in a position to state a demand or make an offer; and

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 28 ¹ The parties shall not append attachments or exhibits to the ENE statement.

1 c. A brief description of any previous settlement
2 negotiations, mediation sessions, or mediation efforts.

3 General statements that a party will "negotiate in good faith" is
4 not a specific demand or offer contemplated by this Order. It is
5 assumed that all parties will negotiate in good faith.

6 **IT IS SO ORDERED.**

7 DATED: January 14, 2008

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9 BARBARA L. MAJOR
10 United States Magistrate Judge

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13 COPY TO:

14 HONORABLE JEFFREY T. MILLER
15 U.S. DISTRICT JUDGE

16 ALL COUNSEL
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